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DIVISION OF ENVIRONMENTAL
RESPONSE AND REMEDIATION
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ERRL-FORM-LTR

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To Whom It May Concern:

This is in response to your inquiry concerning the liability of a lender under the Utah Underground Storage Tank Act (UST Act). You have indicated that your institution is considering making a loan and taking a security interest in property where there was a release of petroleum from an underground storage tank.

Under the UST Act, a lender who does not participate in the management of a facility and holds indicia of ownership primarily to protect his security interest in the facility is excluded from the definition of "responsible party." [Utah Code section 19-6-402(26)(b)]. Pursuant to Utah Code section 19-6-402(26)(d), the terms "indicia of ownership," "primarily to protect a security interest," "participate in management," and "security interest" are defined in accordance with 40 C.F.R. Part 280, Subpart I and 42 U.S.C. section 6991b(h)(9) of RCRA. If underground storage tanks remain on the property and there is a foreclosure and no operator, the lender must take steps to prevent and report leaks as described in 40 C.F.R. Part 280, Subpart I § 280.230.

Liability for costs incurred by the Executive Secretary (UST) of the Utah Solid and Hazardous Waste Control Board under the UST Act is apportioned among responsible parties pursuant to section 19-6-418 and 19-6-424.5. Therefore, a person who is excluded from the definition of "responsible party" would not be subject to cost recovery, or a cleanup or abatement order by the Executive Secretary (UST) under the UST Act.

Sincerely,

Brad T Johnson, Executive Secretary (UST)
Utah Solid and Hazardous Waste Control Board

BTJ/srb